(33)



# Supreme Court of the United States

October Term, 1943

No. 1024 91

HARRY SITAMORE,
PETITIONER,

vs.

THE STATE OF FLORIDA, NATHAN MAYO, as State Prison Custodian, and L. F. CHAPMAN, as Superintendent of the State Prison at Raiford, Florida.
RESPONDENTS.

## PETITION FOR WRIT OF CERTIORARI

MARTIN CARABALLO,
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## PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Harry Sitamore, respectfully prays for a writ of *certiorari* herein to review a final decision of the Supreme Court of the State of Florida, the highest court of said State, affirming the decision of a Circuit Judge in said State in a *habeas corpus* proceeding and denying the petitioner the right to a writ of error *coram nobis* in the above entitled cause. The opinion and decisions of said Supreme Court was rendered and filed under date of February 1st, 1944 clarified in a subsequent opinion on the 15th day of February, 1944 and a rehearing denied on the 23rd day of February, 1944. Said court, in effect, has held that a violation of the petitioner's rights under the 5th, 6th and 14th amendments to the Federal Constitution, can not be reviewed in *habeas corpus* proceedings, while at the same time

denied him, the petitioner, a writ of error *coram nobis* to review the invalidity of his imprisonment on evidence dehors the record.

## SUMMARY OF MATTER INVOLVED

The petitioner, Harry Sitamore, was arrested without a warrant by police officers of Miami Beach, Florida, on the 16th day of March, 1933. He was not taken before a Magistrate nor arraigned in the Criminal Court of Record of Dade County, Florida until March 24, 1933 when he entered a plea of not guilty. On April 1, 1933, still acting in his own proper person, he withdrew his plea of not guilty and entered a plea of guilty and was sentenced to concurrent terms of twenty (20) years on each of two informations. He is now serving these sentences. On each of two additional informations, he received two concurrent sentences of twenty (20) years to begin at the expiration of the first sentence, a total of forty (40) years.

On April 2, 1943 the petitioner presented his petition to the Supreme Court of the State of Florida, the highest court of said State, representing among other things that he was arrested on the 16th day of March by police officers acting without a warrant, confined in jail where for eight days he was subjected to a continuous examinations by police officers and private detectives, acting in relays, before being taken before a Magistrate. That he was denied the advice of counsel and finally after eight more days of such questioning, he was assured by said police officers and the prosecuting attorney that if he would withdraw his plea of not guilty and enter a plea of guilty to the informations and cause the return of the jewelry he would receive a sentence of not less than two and not more than five years

as and for grand larceny, and was assured that the Judge of the Criminal Court of Record, E. C. Collins, had agreed to impose such sentence in case he acceded to their wishes. That not being versed in the law, nor having the benefit of counsel, and not understanding that the informations filed against him were framed on the theory that he had committed the crime of breaking and entering with intent to commit a felony, a more serious offense, he did enter his plea of guilty on the two separate informations in question on the 1st day of April, and, in violation of the promise under which the plea was made, was sentenced to imprisonment by the court to an aggregate of forty years on said informations.

On the filing of said petition a writ of *habeas corpus* was issued by the Honorable Rivers Buford, Chief Justice of said Supreme Court, returnable before the Hon. Paul D. Barns, Circuit Judge of Dade County, Florida, which said Judge, after the taking of the testimony, entered a decree holding that, though the prisoner was led to believe that he would be dealt with more considerately than he was, yet the adjudication of guilty and the sentence were not impeachable by *habeas corpus* and that whether his judgment and sentence should be reviewed was dependent on the trial court and the Supreme Court in proceedings other than *habeas corpus,* "If any are available". The prisoner was remanded into the custody of the respondents.

An appeal was taken from the decision of the Circuit Judge to the Supreme Court of the State of Florida assigning as error, among others, the following:

1. The Court erred in finding that the adjudication of guilty entered by the Judge of the Criminal Court of

Record of Dade County, Florida, was not impeachable by *habeas corpus.*

2. That the Court erred in holding that the sentence imposed upon the petitioner by the Judge of the Criminal Court of Record of Dade County, Florida, was not impeachable by *habeas corpus.*

3. The Court erred in failing to hold under the evidence that the petitioner was coerced into pleading guilty to the information filed in the Criminal Court of Record, Dade County, by long and protracted questioning; that he was deprived of the benefit of counsel, and that his plea of guilty was not voluntary, and that it was made under circumstances which rendered the adjudication and sentence void.

4. That the Court erred in refusing to hold that the plea of guilty and the sentence pronounced against the petitioner was in violation of the 14th Amendment to the Federal Constitution as well as of Sections 4 and 11 of the Declarations of Rights of the Constitution of the State of Florida, and was therefore null and void.

Thereafter the Supreme Court of the State of Florida affirmed the decision of the Lower Court, without opinion, on the 1st day of February, 1944.

On the 7th day of February, 1944 petitioner filed a petition requesting that the decision be clarified in that it was not clear whether the decree of the court was based on the merits or was based on the inapplicability of *habeas corpus* proceedings, or whether appellant's remedy was a writ of *coram nobis,* in which event petitioner requested the court for permission to apply to the Criminal Court of Dade County, Florida, for a writ

of *coram nobis,* notwithstanding the fact that said application must of necessity be made upon facts known to the trial court.

On the 15th day of February, 1944 the Supreme Court of the State of Florida, entered its decree clarifying its opinion and refused the issuance of a writ of *coram nobis.*

Motion for a rehearing having been filed and entertained by the said Supreme Court a rehearing was denied on February 23, A. D. 1944.

## BASIS OF JURISDICTION

It is contended by petitioner that this court has jurisdiction by reason of the provisions of the 5th, 6th and 14th Amendments to the Constitution of the United States which sections, insofar as they affect the present question, inhibit the deprivation of life, liberty or property without due process of law; secure to the accused the right to have the assistance of counsel for his defense, and whereby the several states are prohibited from depriving any person of his life, liberty or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws.

That the jurisdiction of this court in the instant case is derived from Section 237 of the Judicial Code as amended (Title 28, U.S.C.A., Section 344).

That the date of final adjudication of the questions here involved is February 23, 1944 on which date the motion for a rehearing was considered and denied, and that this petition for issuance of writ of *certorari* is filed within ninety days from said date.

## QUESTIONS PRESENTED

### I.

Where in the arrest, prosecution and sentencing of a man his rights under the 5th, 6th and 14th Amendments to the Constitution of the United States have been violated by the officials and court sentencing him to a term of years in the State Prison of the State of Florida, may the Supreme Court of said State deny to such a person the right to a review of such sentence on the theory that the same cannot be reviewed under the known forms of procedure in said State?

### II.

Where on a petition for writ of *habeas corpus* filed with the Supreme Court of the State of Florida the facts alleged show a violation of the petitioner's rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and the Judge before whom the writ of *habeas corpus* was made returnable refused to consider facts dehors the record on the theory that such could not be done under the recognized procedure in said State, should the Supreme Court of said State, on affirming the said ruling, have granted the motion of petitioner for a writ of error *coram nobis* on such fact?

## REASONS RELIED ON FOR THE ALLOWANCE OF WRIT.

It is contended by petitioner that the result of the proceedings above recited has been to deprive a person of the right of review of the denial of his constitutional rights under the Federal Constitution and that the result of the decisions and rulings of the Supreme Court

of the State of Florida are at variance with the decisions of this court on substantially the same questions here presented.

Respectfully submitted,

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MARTIN CARABALLO,

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JOHN G. GRAHAM,
*Of Counsel for Petitioner.*

(36)



# Supreme Court of the United States

**October Term, 1943**

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**No. [redacted] 91**

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HARRY SITAMORE,
PETITIONER,

VS.

THE STATE OF FLORIDA,
NATHAN MAYO, as State Prison Custodian, and
L. F. CHAPMAN, as Superintendent of the
State Prison at Raiford, Florida.
RESPONDENTS.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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## SUPPORTING BRIEF

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## SUPPORTING BRIEF ON PETITION FOR CERTIORARI

The Supreme Court of the State of Florida, the highest court in this State, rendered its judgment on February 1, 1944 (R. 117), clarified its opinion on the 15th day of February, 1944, (R. 118) and denied a rehearing on the 23rd day of February, 1944 (R. 120).

The specific claims advanced before the Supreme Court of the State of Florida, insofar as the same are reviewable by this court, were assigned as errors 1, 2, 3 and 4 (R. 44) and are in the words and figures following:

1. The Court erred in finding that the adjudication of guilty entered by the Judge of the Criminal Court of Record of Dade County, Florida, was not impeachable by *habeas corpus*.

2. That the Court erred in holding that the sentence imposed upon the petitioner by the Judge of the Criminal Court of Record of Dade County, Florida, was not impeachable by *habeas corpus.*

3. The Court erred in failing to hold under the evidence that the petitioner was coerced into pleading guilty to the information filed in the Criminal Court of Record, Dade County, by long and protracted questioning; that he was deprived of the benefit of counsel, and that his plea of guilty was not voluntary, and that it was made under circumstances which rendered the adjudication and sentence void.

4. That the Court erred in refusing to hold that the plea of guilty and the sentence pronounced against the petitioner was in violation of the 14th Amendment to the Federal Constitution as well as of Sections 4 and 11 of the Declarations of Rights of the Constitution of the State of Florida, and was therefore null and void.

The Supreme Court of the State of Florida affirmed the order of the Lower Court remanding the prisoner (R. 117), clarified its opinion (R. 118) and denied a rehearing (R. 120).

Jurisdiction to review this cause is found in Section 237 of the Judicial Code as amended (Title 28 U.S.C.A., Section 344).

## HISTORY OF CASE

On the 2nd day of April, 1943, the petitioner, Harry Sitamore, an inmate of the State prison at Raiford presented to the Supreme Court of the State of Florida a petition for writ of *habeas corpus.* (R. 1). This petition not only included the record of the court by which he was sentenced, attached as exhibits thereto, but also set forth facts which were in effect as follows:

That petitioner had been arrested without a warrant, confined in jail for eight days before being taken before a Magistrate, during which period he had been subjected to a constant grilling by the officers of the law. That he was denied the right to counsel and after eight additional days of grilling was finally induced by the officers of the law, including the prosecuting attorney, to withdraw his plea of not guilty to a charge of breaking and entering entered when arraigned, to a plea of guilty on the promise of the officers that his sentence would not exceed five years which is the maximum sentence for grand larceny. That he was assured by said officers that the Judge of the Criminal Court had agreed that if he would cause the return of the stolen property and would enter a plea of guilty, he would impose such mitigated sentence.

That the petitioner was not skilled in the law and was without the advice of counsel, and relying on said promises and assurances, did withdraw his plea of not guilty and entered a plea of guilty whereupon the court in violation of the agreement sentenced him to a total of forty years imprisonment.

## WRIT OF HABEAS CORPUS

On the filing of the petition the said Supreme Court on the 2nd day of April, 1943, issued its writ referring the matter to Judge Barns, a Circuit Judge in said State, for the hearing and adjudication. (R. 26).

## SUMMARY OF EVIDENCE

On the hearing before Judge Barns, evidence was presented on behalf of the petitioner fully supporting all of the facts alleged in the petition. (R. 52 to 99).

In addition, testimony was offered that the Judge of the Criminal Court who sentenced the petitioner had knowledge of the agreement under which the petitioner plead guilty, and had consented to a mitigated sentence. (R. 84, 90). Proof was also offered showing the Judge of the Criminal Court was dishonest and corrupt; (R. 95) had been in the habit of imposing sentences in criminal cases and setting same aside at the close of term. (R. 99) That said Judge was later arrested and tried for bribery and corruption and malfeasance and was caused to resign his office and forfeit right to practice law in Florida. (R. 95-97). That petitioner was warned not to employ counsel and threatened with punishment if he did. (R. 59). That at the time of his plea and sentence petitioner was without counsel and Judge Collins, the judge of the trial court, though announcing the prisoner was entitled to a mitigated sentence, stated that because of the publicity given the case he had to give him the limit of the law. (R. 61). It was also established by the testimony of the petitioner that after the sentence was pronounced on him an emissary of Judge Collins came to him seeking $15,000.00 later reduced to $7500, for a commutation of the sentence. (R. 61-62). The significance of this evidence lies in the fact that Judge Collins, who testified by depositions taken *after* that evidence had been introduced, did not deny such state of facts nor even comment on it.

## ORDER OF LOWER COURT

The Circuit Court at the conclusion of the *habeas corpus* hearing, in its order remanding the prisoner, in effect found; that the prisoner was led to believe that he would be dealt with more considerately than he was but that the judgment and sentence could not be review-

ed in *habeas corpus* proceedings but depended on the trial court and Supreme Court for relief in proceedings other than *habeas corpus*, "if any are available". (R. 42-43).

## QUESTIONS PRESENTED

I.

Where in arrest, prosecution and sentencing of a man his rights under the 5th, 6th and 14th Amendments to the Constitution of the United States have been violated by the officials and court sentencing him to a term of years in the State Prison of the State of Florida, may the Supreme Court of said State deny to such a person the right to a review of such sentence on the theory that the same can not be reviewed under the known forms of procedure in said State?

II.

Where on a petition for writ of *habeas corpus* filed with the Supreme Court of the State of Florida the facts alleged show a violation of the petitioner's rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and the judge before whom the writ of *habeas corpus* was made returnable refused to consider facts *dehors* the record on the theory that such could not be done under the recognized procedure in said State, should the Supreme Court of said State, on affirming the said ruling, have granted the motion of petitioner for a writ of error *coram nobis* on such facts?

## ARGUMENT

**A plea of guilty as result of deception or misconduct of State officers renders Judgment and sentence illegal under Federal Court decisions.**

By Amendments 6 and 14 of the Federal Constitution it is provided in effect that all persons charged with a criminal violation are entitled to the advice of counsel and shall not be deprived of life, liberty or property without due process of law.

Under these sections the Supreme Court of the United States has uniformly held that where a person unskilled in the law and charged with a crime is denied the right of counsel or has been induced through deception of the officers of the law to enter a plea of guilty to a criminal charge, or his confession or plea of guilty is brought about by questioning or grilling before he is taken before a Magistrate, his constitutional rights *to due process of law* have been violated and his imprisonment is illegal.

*Widener* vs *Johnston,* 136 Fed. 2nd 416;

*Walker* vs *Johnston,* 312 U. S. 275-85 L. Ed. 830;

*Smith* vs *Brady,* 312 U. S. 329-85 L. Ed. 859;

*Waley* vs *Johnston,* 316 U. S. 101-86 L. Ed. 1302;

*McNabb* vs *U. S.,* 318 U. S. 332-87 L. Ed.;

*Anderson* vs *Johnston,* 318 U. S. 350-87 L. Ed.

In the Widener case, supra, the rule as set forth in the first headnote is as follows:

> "Where prisoner's constitutional right to "assistance of counsel" has been violated or his plea of guilty has been coerced or induced by decep-

tion of government officials, it is District Court's duty to order prisoner's release on write of habeas corpus."

In the *Waley* vs *Johnston* case, supra, the Supreme Court of the United States states:

> "A conviction on a plea of guilty coerced by a federal law enforcement officer is not consistent with due process of the law."

**Right of Defendant to be represented by Counsel and effect of a denial.**

In the case of *Johnson* vs *Zerbst,* 304 U. S. 458, the Federal Supreme Court, speaking through Mr. Justice Black, said ,

> "The Constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused — whose life or liberty is at stake—is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record. * * * * * The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution."

Furthermore, the right to the assistance of counsel exists at the time of arraignment as well as at the trial. This was pointed out by Mr. Justice Stephens in *Evans* v. *Rives,* 126 F. (2d) 633, a case decided by the United

States Court of Appeals for the District of Columbia, in 1942. There the court said:

> "Loss of life or liberty is as certain through sentence upon a plea of guilty through sentence upon the verdict of a jury. The importance to an accused of the assistance of counsel in the event of a plea of not guilty and trial is patent. It is equally important to an accused, in determing in what manner he may properly meet a charge and before a decision as to the nature of his plea, to have the advice of counsel concerning, for example, the insufficiency of the indictment, the possible existence of a defense or bar under facts known to the accused but the legal import of which he may not know, the nature of the penalty provided for the offense charged, and the probably extent to which it will be imposed, under the facts involved, in the event of a plea of guilty."

**Under decisions of Federal Courts, including Supreme Court, Habeas Corpus is the proper remedy to test legality of conviction.**

Under Federal Statutes it is in effect provided (Title 28 U.S.C.A., Sections 460-461) that under a writ of *habeas corpus* the court hearing the matter has the power to take evidence, inquire into the facts and determine the legality of the conviction as right and justice demand.

Under this provision, Federal courts have in many recent cases held that evidence of facts *dehors* the record are admissible on the hearing in *habeas corpus* and if the facts show that the prisoner's right under the constitution have been violated the judgment and sentence are *illegal* and *void* and he should be discharged from imprisonment.

See above citations.

In the *Waley* vs *Johnston* case, supra,the rule is laid down as follows:

> "True, petitioner's allegations in the circumstances of this case may tax credulity. But in view of their specific nature, their lack of any necessary relation to the other threats alleged, and the failure of respondent to deny them specifically, we cannot say that the issue was not one calling for a hearing within the principles laid down in Walker v. Johnston, supra. If the allegations are found to be true, petitioner's constitutional rights were infringed. For a conviction on a plea of guilty coerced by a federal law enforcement officer is no more consistent with due process than a conviction supported by a coerced confession. Bram v. United States, 168 U.S. 532, 543, 18 S. Ct. 183, 187, 42 L. Ed. 568; Chambers v. Florida, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716. And if his plea was so coerced as to deprive it of validity to support the conviction, the coercion likewise deprived it of validity as a waiver of his right to assail the conviction. Johnson v. Zerbst, 304 U. S. 458, 467, 58 S. Ct. 1019, 1024, 82 L. Ed. 1461.
>
> The issue here was appropriately raised by the habeas corpus petition. The facts relied on are dehors the record and their effect on the judgment was not open to consideration and review on appeal. In such circumstances the use of the writ in the federal courts to test the constitutional validity of a conviction for crime is not restricted to those cases where the judgment of conviction is void for want of jurisdiction of the trial court to render it. It extends also to those exceptional cases where the conviction has been in disregard of the constitutional rights of the accused, and where the writ is the only effective means of preserving his rights. Moore v. Dempsey, 261 U. S. 86, 43 S. Ct. 265, 67 L. Ed. 543; Mooney v. Holohan, 284 U. S. 103, 55 S. Ct. 340, 79 L. Ed. 791, 98 A.L.R. 406; Bowen v. Johnston, 306 U. S. 19, 24, 59 S. Ct. 442, 444, 83 L. Ed. 455."

That Sitamore was coerced and intimidated and subjected to protracted grilling can not be denied. When arrested at his home without a warrant at 4:30 A. M. by ten or eleven policemen and detectives he was hit on the head with a club (R. 54). That he was questioned for several days both at night and in the daytime and deprived of his sleep. (R. 55). Chief of Police Teaney, one of the witnesses for the respondents, confirms most of this in his deposition in his answer to the fifth interrogatory (R. 102-103) where he said:

> "I do remember we had him in Chief of Police office which was my office several times for questioning; we took turns about examining, sometime I would do it and others Mayor Katzentine, and Sgt. Eugene E. Bryant would do the questioning; there was also present several detectives; Briefly the questioning by me and others *present* was along the line of determining the guilt of Sitamore and the location of the stolen jewelry, we being anxious to find the jewelry; *after a long tedious grilling* he told me and the others where to look for the jewelry, etc". (Italics ours).

Respondent's witness Katzentine, who was Mayor of Miami Beach at the time, also gives the names of most of those present at these questionings (R. 106), and stated that notes were taken of the grilling. (R. 106) Significantly these notes which would show the continuous grilling and whether or not a mitigated sentence was promised have not been produced to dispute the evidence of the petitioner and his witnesses. It would seem to us that if the denials of the respondent's witnesses had been backed by the stenographic report, instead of by admittedly dim recollections, the respondents might have made a better case. That these notes were made as testified to by petitioner is admitted by Katzentine (R. 106). The failure to produce them is unexplained.

In the McNabb case, supra, grilling of one defendant for two hours before arraignment was considered illegal. In the more recent Ashcraft case, not yet reported, 36 hours was frowned upon. In this instant case the grilling continued from the time of the arrest on the 16th day of March until the petitioner was worn down and plead guilty on April the 1st, a total of sixteen days.

It can not be argued that these Federal cases stand on a different footing than the case at bar because there the provisions of the Federal Constitution were being studied in Federal Courts, since the Supreme Court of the State of Florida, by the law of the land and by its own pronouncement, is bound to give effect and validity to the Federal Constitution in all cases pending befort it.

Not only is the above true but a comparison of the Federal Statutes on the subject with the Florida Statutes will show that the Federal Statutes (18 U.S.C.A. Section 595) require that the defendant be taken before the nearest United States Commissioner or the nearest judicial officer having jurisdiction, while the Florida Statutes (Section 901.23, Florida Statutes 1941) requires that the arrested person shall be taken without unnecessary delay before the nearest accessible magistrate in the county in which the arrest occurs, having jurisdiction, and there make complaint, etc. It would seem to us that the imperative necessity of the immediate production of the accused before a magistrate is more stringent under the Florida law than under the Federal Statutes. Certainly it is true that if a failure to comply with the Federal Statutes renders the plea of guilty illegal the same would be true under the Florida Statute, but with even more force.

**The Judgment and Sentence was also in violation of the Constitution of the State of Florida.**

The Constitution of the State of Florida, Sections 11 and 12 of the Bill of Rights, follows the Federal constitution in that it provides, in effect, that any person charged with a crime is entitled to counsel of his own choice and is not to be deprived of life, liberty or property without due process of law, and courts of this state have also held that a plea of guilty to a criminal charge, made without the advice of counsel, must be understandingly made by a competent person and without any coercion or promise or deception of the officers of the law.

*Nickles* vs *State,* 99 So. 121-86 Fla. 208;

*Brown* vs *State,* 109 So. 627, 92 Fla. 592;

*Casey* vs *State,* 156 So. 282, 116 Fla. 3;

*House* vs *State,* 177 So. 705, 130 Fla. 400;

*Eckles* vs *State,* 180 So. 764, 132 Fla. 526;

*Artigas* vs *State,* 192 So. 795, 140 Fla. 671.

The rule laid down in the Artigas case, supra, Page 796, is as follows:

> "The law controlling the case at bar is well settled in Florida. The rule or doctrine previously enunciated by this court is that a plea of guilty when entered should be entirely voluntary by one competent to know the consequences of such a plea and the entering of a plea of guilty should not be induced by fear, misapprehension, persuasion, promises, inadvertence or ignorance. See Pope v. State, 56 Fla. 81; 47 So. 487; 16 Ann. Cas. 972; Britton v. State, 68 Fla. 438, 67 So. 142; Clay v. State, 82 Fla. 83, 89 So. 353; Nickles v. State, 86 Fla. 208, 98 So. 497, 502, 99 So. 121;

Brown v. State, 92 Fla. 595, 109 So. 627; Sinclair v. State, 133 Fla. 77, 182 So. 637."

**Florida's Statute regulating use of Writ of Habeas Corpus is practically identical with the Federal Court procedure.**

In Florida, also, as in Federal courts, Sections 79.06 and 79.08 Florida Statutes, 1941, which govern the use of writ of *habeas corpus* provide, in effect, that the return made to a writ shall not be taken to be conclusive as to the facts stated therein but it shall be competent for the court, justice or judge, before whom such return is made to examine into the cause of the imprisonment or detention, *to receive evidence in contradiction of the return,* and to determine the same as the very truth of the case shall require. And the court, justice or judge before whom the prisoner shall be brought shall either discharge him, admit him to bail or remand him to custody, as the *law* and the *evidence* shall require.

**Habeas Corpus proceedings proper and only remedy in view of the facts in the Case at Bar.**

In view of the similarity of the provisions of State and Federal constitutions, as well as the procedure under writs of *habeas corpus,* counsel for petitioner contend that the State court should have followed the decisions of the United States Supreme Court in its construction of the use of the writ of *habeas corpus* to remedy violations of rights assured to persons charged with crime by the constitutions of both Federal and State governments.

Not only is the above true but the Florida Supreme Court has recognized that where a man's constitutional

rights have been violated through the action of state agents a conviction brought about thereby is null and void and may be collaterally attacked under a writ of *habeas corpus.*

*Skipper* v. *Schumacher*, 169 So. 58-124 Fla. 384.

In the Schumacher case above cited, the petitioner sought relief from imprisonment on the ground of misconduct of certain members of the grand jury intimidating witnesses as to their testimony. Though the Supreme Court held that the grand jury acted only as a body and not as individuals and the individual members did not represent the state and therefore denied the writ, the court in its opinion clearly recognized that if the conviction had been secured through a violation of the due process clause as the result of action of state officials, *habeas corpus* would have been the proper remedy as is shown by the following headnotes; from 169 So. 58:

> "Prosecuting attorney is "agent" of state as respects whether his action is state action within amendment to Federal Constitution prohibiting state from depriving any person of life, liberty, or property without due process of law."
>
> "Judgment of conviction, knowingly obtained by prosecuting attorney's conscious and deliberate use of perjured testimony is *null* and *void* under Fourteenth Amendment to Federal Constitution."
>
> "Habeas corpus is proper remedy where one is restrained of his liberty under void judgment, since such judgment can be attacked colatterally."

**Writ of Coram Nobis not available to Petitioner under the peculiar facts of this Case.**

Since this court has held in the case of *Hysler* vs. *State of Florida,* 315 U. S. 411-62 S. Ct. Rep. 688 that Florida's answer to a problem such as we have here is the writ *coram nobis* we believe it is pertinent to show in this brief that such a writ is not available to the petitioner.

The function of a writ of *coram nobis* as laid down by the decisions of the Supreme Court of the State of Florida is to bring the attention of the court to facts then existing and not shown by the record *nor known by the court or party or counsel* at trial and being of such vital nature that if known in time would have prevented the rendition and entry of the judgment assailed.

*Nickels* vs. *State,* 99 So. 121 86 Fla. 208;
*Lamb* vs *State,* 107 So. 535, 91 Fla. 396;
*Chambers* vs. *State,* 158 So. 153-154, 115 Fla. 510.

In the Lamb case, supra, the rule as laid down in headnote 12 is as follows:

> "The function of a writ of error coram nobis is to bring the attention of the court to a specific fact or facts then existing but not shown by the record and not known by the court or by the party or counsel at the trial, and being of such vital nature that if known to the court in time would have prevented the rendition and entry of the judgment assailed."

The inference to be drawn on the functions of a writ of *coram nobis* as indicated by the above citations is that the law presumes all presiding judges to be honest and upright and conscious of the fact that they are

charged with the duty, not only of enforcing laws intended for the protection of the public, but also to see that the prisoner's right under the constitution are fully protected. That if the judge who tried and sentenced the prisoner had knowledge that the prisoner's rights under the constitution had been violated he would not have adjudicated the prisoner guilty nor sentenced him to imprisonment until all rights of the prisoner had been fully protected.

In the case at bar the petition as well as the proof clearly showed that the judge by whom the prisoner was sentenced was not an honest and upright judge; that instead of protecting the rights of the prisoner, which he knew had been violated, he chose to disregard all his constitutional rights and proceeded to enter his judgment and sentence in violation of the agreement made by himself and his officers.

It is also significant that Judge Collin's record on cases of defendants brought before him charged with breaking and entering, as shown by Exhibit No. 1, (R. 74-a), show that his sentences, excluding Sitamore's, averaged between four and five years, a number of such cases having had their sentences suspended. (Sitamore's accomplice was sentenced to only five years.) This exhibit covers all such cases occuring in the same year in which Sitamore was sentenced and are not selected cases. One is led to the inevitable conclusion that the severity of this sentence was deliberate and as a basis for a later commutation or suspension for a consideration. Such conduct on the part of a member of the judiciary deserves the severest condemnation and the existence of such motives render his sentence odious and abhorent. That Sitamore stole part of the jewelry and received part from others does not make him guilty of

breaking and entering and any sentence of more than five years is excessive, arbitrary and capricious.

Anyone reading this record and noticing the remarks of Judge Barns during the trial and reading his opinion in the remanding order (R. 42) can not fail but come to the conclusion that Judge Barns believed the testimony of the petitioner. That he believed the petitioner's rights under the Constitution had been trampled on and that were it not for the fact that it was his opinion that *coram nobis* was the proper remedy in this case that he would have granted the petition and discharged the petitioner.

## A CHALLENGE TO JUSTICE

Human experience teaches us that if there should ever be a breakdown in our democratic institutions, or if the rights of the individual guaranteed by the Bill of Rights become a dead letter, that this is not likely to occur through alien force of arms, nor by any one other sudden stroke, but by an insidious process whereby the rights of the lowly or the accused are first denied and from this stepping stone as a precedent the abuse of these rights will spread in waves which reach ever further and ever higher until no rights remain in any one, and there will emerge concentrated and autocratic power in the hands of the strongest.

In this case we believe we have demonstrated that the petitioner's rights under the Federal and State Constitutions have been denied to him. We also have shown that under prior decisions of the highest Florida Court the writ of *coram nobis* will not lie, and since the fundamental rights to life, liberty and the pursuit of happiness may not be infringed upon except by due process

of law it would appear to us that a writ of *habeas corpus* is the proper remedy in this case.

### Is the decision of the Supreme Court of Florida an adjudication on the merits?

In the clarification opinion of February 15, 1944 the Supreme Court of Florida used this language (R. 117),

> "In response to appellant's petition for clarification of our judgment in this case, for the information of appellant and his counsel we might state that, while some members of the Court were in some doubt as to whether habeas corpus, or a bill in equity to impeach the judgments and sentences under which appellant is held in custody for fraud in their procurement, was the appropriate remedy for appellant to have pursued in this case (see Skipper vs Schumacher, 124 Fla. 384, 169 So. 58), the court, in rendering its judgment of affirmance, considered and decided the appeal on the merits. The testimony on the vital issues presented was in conflict, but there being in our opinion ample evidence to support the judgment entered by the Circuit Judge, who was in a better position than the members of this Court to determine the credibility of the testimony, we entered a judgment of affirmance, in accordance with our established rule governing such cases."

By referring to the order of the Circuit Judge which our Supreme Court affirmed it is apparent that the Supreme Court of Florida was in error in assuming that the issues had been decided on the merits. This is easily demonstrated by referring to the order of the Circuit Judge (R. 42) which in part is as follows:

> "Upon the record and evidence adduced the questions are:

(1) *Is the adjudication of guilty* impeachable by *habeas corpus,* and (2) Is the *sentence* impeachable by *habeas corpus.*

It is my conclusion neither are impeachable by *habeas corpus* proceedings and particularly so after the lapse of so long a time." * * * * * *

Based upon this apparent misconception of the decision of the Circuit Judge we applied for a rehearing (R. 119) which rehearing was denied. (R. 120).

## CONCLUSION

We respectfully submit that since *coram nobis* is not available to petitioner that the Florida courts should have considered the merits in the *habeas corpus* proceedings and, having failed to do so, the petitioner has been denied the protection of the laws of the United States.

We believe further that, even if it be deemed that the Florida courts have passed on the merits, yet they have decided these questions adversely to the decisions of the Supreme Court of the United States on substantially similar facts.

Respectfully submitted.

MARTIN CARABALLO

JOHN G. GRAHAM
*Attorneys for Petitioner.*

# Supreme Court of the United States

October Term, 1943

No. 91

HARRY SITAMORE,
PETITIONER,

vs.

THE STATE OF FLORIDA,
NATHAN MAYO, as State Prison Custodian, and
L. F. CHAPMAN, as Superintendent of the
State Prison at Raiford, Florida,
RESPONDENTS.

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

J. TOM WATSON
*Attorney General of Florida*

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## INDEX TO SUBJECTS

## THE INACCURACIES AND INSUFFICIENCIES OF THE PETITION

The brevity with which the opposition to the issuance of the writ sought by the petition might have been dealt with has been prevented by the inaccuracies and insufficiencies of the petition, which necessitate analysis and comparison with the record itself.

The myriad points raised by the original petition as amended, upon resort to appellate proceedings which moved the case from the Circuit Court of Dade County to the Supreme Court of Florida, dwindled to the four assignments of error set forth in the petition, which, in turn, upon the preparation of the petition now before us, again dwindled to but two "questions presented"; and these, with the supporting brief we will deal with later after pointing out the inaccuracies and insufficiencies of the petition.

At the outset it is but fair that this Court should be informed of the character of the person in whose behalf this proceeding is brought. He was, as Judge Barns found him to be, "a professional thief" (tr. 43), who had pleaded guilty, and whose guilt was admitted both by him (tr. 66) and by his counsel in argument. In the light of this important fact, the attempt of counsel to metamorphose the petitioner into an injured innocent, and to appeal to the sympathy of the court should fail to register.

In the "SUMMARY OF MATTER INVOLVED" on page 2 of the petition, it is stated "That he (the petitioner) was denied the advice of counsel * * *". This statement is utterly without record support. In fact, the exact opposite is true as is shown by pages 58 and 59 of the record, from which it appears that the petitioner was offered counsel and voluntarily rejected the proffered service.

On page 3 of the petition we find a further attempt to obtain the sympathy of the court by the observation: "That not being versed in the law, nor having the benefit of counsel, and not understanding the informations filed against him", etc. An effective prevention of this attempt lies in the reflection that the petitioner, a professional thief of admitted guilt was sufficiently versed in the law to know that the informations charged that he stole in the aggregate over $140,000.00 worth of jewelry from four victims, and to admit that he did so, in which candid confession he was later followed by his counsel "versed in the law", who also admitted his guilt.

When the "questions presented" are reached we will find that there is an attempt of counsel for petitioner to reduce what actually occurred to a mere isolated finding that habeas corpus would not reach the situation in which the petitioner and his counsel found themselves, which finding, as we will subsequently show, was perfectly applicable and valid, and in view of what also happened, utterly immaterial.

What also happened was that the supposed agreement claimed to have been made with petitioner by the judge who presided at the trial of petitioner was completely disproved by four witnesses, who were named by petitioner as having been present when the claimed agreement was made. (Testimony of Teaney, Katzentine, Collins and Harrington, tr. 102 to 116.)

Judge Barns, in remanding the petitioner concluded: (tr. 43) "He appears to be a professional thief. His adjudication of guilt should stand", which is a direct and positive adjudication on the merits, as the Supreme Court found it to be when it was asked to clarify its per curiam opinion.

The rather ample clarification contained the following words: (tr. 118)

> "* * * the court, in rendering its judgment of affirmance, considered and decided the appeal on the merits. The testimony on the vital issues presented was in conflict, but there being in our opinion ample evidence to support the judgment entered by the Circuit Judge, who was in a better position than the members of this Court to determine the credibility of the testimony, we entered a judgment of affirmance, in accordance with our established rule governing such cases."

From the foregoing it appears that the petitioner had both his day in court and his remedy by habeas corpus, and the plaint that he was deprived of either is without substance.

## THE "QUESTIONS PRESENTED" AS SET FORTH IN THE PETITION

The questions presented as set forth in the petition and in the supporting brief are as follows:

"I.

> Where in the arrest, prosecution and sentencing of a man his rights under the 5th, 6th and 14th Amendments to the Constitution of the United States have been violated by the offiicials and court sentencing him to a term of years in the State Prison of the State of Florida, may the Supreme Court of said State deny to such a person the right to a review of such sentence on the theory that the same cannot be reviewed under the known forms of procedure in said State?

"II.

> Where on a petition for writ of habeas corpus filed with the Supreme Court of the State of Florida, the facts alleged show a violation of the petitioner's

rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and the Judge before whom the writ of habeas corpus was made returnable refused to consider facts dehors the record on the theory that such could not be done under the recognized procedure in said State, should the Supreme Court of said State, on affirming the said ruling, have granted the motion of petitioner for a writ of error coram nobis on such fact?

## THE SUPPORTING BRIEF

The brief for petitioner filed in support of his application for the writ reiterates the baseless claim that he was denied the right to counsel, which, as we have seen, is absolutely without factual support.

In the summary of the evidence (pages 3 et seq. of the brief) it is stated: "Proof was also offered showing the Judge of the Criminal Court was dishonest and corrupt", and page 99 of the record was referred to.

On page 97 it appears that the objection to this testimony on the ground of its lack of relevancy was sustained by Judge Barns.

The statement that the Judge "had been in the habit of imposing sentences in criminal cases and setting same aside at the close of the term", credited to page 99 of the record, was stricken by Judge Barns as appears by the same page.

The statement "That said judge was later arrested and tried for bribery and corruption and malfeasance and was caused to resign his office and forfeit right to practice law in Florida" was eliminated from the record by Judge Barns when he sustained the State's objection to its relevancy, as shown by page 97 of the record; and there was no proof whatever of his having forfeited his right to practice in Florida; but by page 110 of the record it appears that the Judge (E. C. Collins) was practicing law in Ocilla, Georgia,

at the time his deposition was taken, and presumably ever since.

"That petitioner was warned not to employ counsel and threatened with punishment if he did", which is credited to page 59 of the record, appears on examination to be a statement by some person, whose name the petitioner could not recollect, and who did not appear to have any authority whatsoever.

The statements attributed to the Judge as shown by page 61 were all denied by the State's depositions, and were severally irrelevant, and the offer made by one Sullivan or Sully to reduce the sentence in consideration of the payment of $15,000.00 or $7,500.00 later, are not either connected with the Judge nor (coming after sentence) could they have affected the legality of the judgments or sentences in any way.

The failure of Judge Collins to deny these rumors, if his statements are to be limited to that extent cannot be warped into a confession that the persons who made them were authorized by him so to do.

It is to be regretted that counsel for petitioner injected these irrelevant and immaterial asides and thereby made it necessary to deal with them in this brief.

## THE ARGUMENT IN BEHALF OF PETITIONER

Pages 6 et seq. of petitioner's supporting brief present a voluminous array of authority with which, except for its inapplicability to this case, we have no serious quarrel.

The implication that the pleas of guilty were the result of deception or misconduct finds no support in the record; and the petitioner rested content with his pleas of guilty for over ten years, and through various sets of attorneys and escape and a previous habeas corpus proceeding; and even now both he and his counsel freely and frankly admit his guilt, and consequently the justice of his convictions and his sentences, which were within the statutory limit.

The asserted right to be represented by counsel, as the record shows, was never denied.

Whatever may be said of the right to habeas corpus in the Federal courts and/or in the courts of Florida, the fact remains that whether applicable or not the petitioner got all of the remedy that it could afford, which was a liberal allowance of time to bring forward his witnesses and to put in his testimony and repeated opportunity for his counsel to argue the dwindling points he made, and this is due process of law.

On page 10 appears a not too thickly veiled insinuation that the State is responsible for the failure of the petitioner to obtain the notes taken as shown by page 106 of the record. If this aside is intended to imply that the State or its counsel had anything whatever to do with the failure of the petitioner to procure those notes, it is hereby denied and challenged as false and untrue.

What counsel for petitioner has to say about the judgments being in violation of the Constitution of Florida is all sufficiently concluded by the decision of the Supreme

Court of Florida in its opinion and judgment which appears on page 117 of the record, and is quoted from page 18 of petitioner's brief.

The question propounded by counsel for the petitioner on page 18 of said brief, which is: "IS THE DECISION OF THE SUPREME COURT OF FLORIDA AN ADJUDICATION ON THE MERITS?", is sufficiently answered by what the Court itself said in the quotation which appears on page 18 of the brief immediately under the question.

## THE QUESTIONS RELIED UPON BY THE PETITIONER IN THIS PROCEEDING

The petitioner's first question is as follows:

"I.

> Where in arrest, prosecution and sentencing of a man his rights under the 5th, 6th and 14th Amendments to the Constitution of the United States have been violated by the officials and court sentencing him to a term of years in the State Prison of the State of Florida, may the Supreme Court of said State deny to such a person the right to a review of such sentence on the theory that the same can not be reviewed under the known forms of procedure in said State?"

The answer to this question is that the Supreme Court of Florida did not do any such thing, as petitioner's quotation from the Court's clarified decision clearly shows.

On the other hand, the failure of the petitioner's counsel to have the sentences which were within statutory limits, reviewed by the Court in which they were pronounced, is not attributable to either the Supreme Court of Florida nor the State's counsel.

The first question for the numerous reasons set forth herein should be answered in the negative, or found irrelevant.

The petitioner's second question is as follows:

"II.

> Where on a petition for writ of habeas corpus filed with the Supreme Court of the State of Florida the facts alleged show a violation of the petitioner's rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and the judge before whom the writ of *habeas corpus* was made returnable refused to consider facts *dehors* the record on the theory that such could not be done under the recognized procedure in said State, should the Supreme Court of said State, on affirming the said ruling, have granted the motion of petitioner for a writ of error *coram nobis* on such facts?"

This question is sufficiently answered by petitioner's own brief.

On page 15 of the brief in bold type we find the statement:

**"WRIT OF CORAM NOBIS NOT AVAILABLE TO PETITIONER UNDER THE PECULIAR FACTS OF THIS CASE."**

This statement is not only accurate, but it is in strict accordance with what the Supreme Court of Florida decided as shown by the now familiar quotation on page 18 of petitioner's brief; and it forms a complete and sufficient reason why the petitioner's second question should also be answered in the negative.

## CONCLUSION

In conclusion it is contended that the petition should be denied.

Respectfully submitted,

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